

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:09cv312

**TEXTRON FINANCIAL
CORP.,**

Plaintiff,

vs.

**SEVEN FALLS GOLF AND
RIVER CLUB, LLC; KEITH
VINSON; and PAULA VINSON,**

Defendants.

**ORDER AND
NOTICE OF HEARING**

THIS MATTER is before the Court on the Plaintiff's Motion for Claim and Delivery Pursuant to N.C. Gen. Stat. § 1-471, et seq. and Federal Rule of Civil Procedure 64 [Doc. 10], filed September 4, 2009.

The Plaintiff Textron Financial Corp. ("Textron") moves pursuant to Rule 64 of the Federal Rules of Civil Procedure and N.C. Gen. Stat. § 1-472 for the immediate return of certain golf course maintenance equipment ("Equipment") which was delivered to the Defendants Seven Falls Golf and River Club, LLC ("Seven Falls") pursuant to two Master Lease Agreements. [Doc. 10].

Pursuant to Rule 64 of the Federal Rules of Civil Procedure, “[a]t the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment.” Fed. R. Civ. P. 64. Section 1-472 of the North Carolina General Statutes provides that “[t]he plaintiff in an action to recover the possession of personal property may claim the immediate delivery of the property . . . at any time before the judgment in the principal action.” N.C. Gen. Stat. § 1-472.

In support of its Motion for Claim and Delivery, and as required by N.C. Gen. Stat. § 1-473, the Plaintiff has presented the Affidavit of Charles Gibson to show: (1) that Textron is the owner of the Equipment claimed in the Amended Complaint, or is lawfully entitled to its possession by virtue of a special property therein; (2) that the Equipment is being wrongfully detained by Seven Falls; (3) that Seven Falls is wrongfully detaining the Equipment so that Seven Falls may continue to use it in connection with the golf course that Seven Falls operates or plans to operate and to prevent Textron from exercising its rights under the Leases and the applicable law; (4) that the Equipment has not been taken for tax,

assessment or fine, pursuant to a statute, or seized under an execution or attachment against Textron's property; and (5) that the actual value of the Property is \$422,542.00. [Doc. 11-2].

Upon careful consideration of the Plaintiff's Motion and the Affidavit filed in support thereof, and consistent with the procedure set forth in Section 1-474.1 of the North Carolina General Statutes, the Court hereby enters the following Order.

ORDER

IT IS, THEREFORE ORDERED that the Clerk of Court shall deliver by certified mail, return receipt requested, a copy of this Order and Notice to the Defendant Seven Falls Golf and River Club, LLC at the office of its registered agent for service of process in North Carolina, NP Corpserv NC, LLC, 701 Green Valley Road, Suite 100, Greensboro, North Carolina 27408, requiring the Defendant to appear at a hearing before the undersigned on **October 5, 2009, at 2:00 p.m.** at the United States District Courthouse for the Western District of North Carolina, Asheville Division, 100 Otis Street, Asheville, North Carolina.

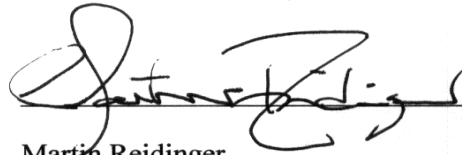
IT IS FURTHER ORDERED that the Defendant shall not willfully dispose of, remove or permit the removal from the State of North Carolina, or cause or permit willful damage or destruction of, the property described below:

Equipment Description
Jacobsen AR Fine Cut [Mower]
Jacobsen PA 60 Var Depth Aerator
Jacobsen GA 24 Aerator, 8 HP
Jacobsen GA 24 Aerator, 8 HP
Jacobsen Groom Master
Jacobsen Groom Master
Jacobsen LF3400 4WD
Jacobsen LF3400 4WD
Jacobsen LF3400 4WD
Jacobsen 63285 GK 526A
Jacobsen 63285 GK 526A
Jacobsen 63285 GK 526A
Jacobsen 63285 GK 526A
Jacobsen 1900 Tri King Diesel
Jacobsen E-Plex II
Jacobsen G-Plex III
Ryan Mataway [Overseeder]
Ryan JR Sodcutter W/Honda 18" Blad
Steiner 430 Tractor
Lely HR Spreader
Tycrop Pro Pass 1800
Tycrop MH-400 Material Handler
Tru-Turf RS 48 Roll-N-Spike
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Jacobsen AR3 Triplex Rotary Mower

Equipment Description
Jacobsen AR3 Triplex Rotary Mower
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Jacobsen Eclipse 122 Mower
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Jacobsen Eclipse 122 Mower
Jacobsen Eclipse 122 Mower
Jacobsen Eclipse 122 Mower
Jacobsen Eclipse 122 Mower
Jacobsen Eclipse 122 Mower
Cushman Truckster 32 HP Gas 4-WHL
Jacobsen Spraytek DS-300
Jacobsen Spraytek DS-175
Truckster 32 HP Gas 4-WHL A
Cushman 1500 Top Dresser
Turfco F15B-SP Top Dresser
Jacobsen 63285 GK 526A
Smithco V-72 Pull Type Sweeper
Landpride 60" Seeder
Billy Goat 9 HP Blower
Billy Goat 9 HP Blower
Cushman Core Harvester
Turfco F15B-SP Top Dresser
Fourteen (14) Jacobsen Mow-N-Go Trailers
Nine (9) 2008 Jacobsen 22" Turf Groomers
Four (4) E-Z-GO MPT 1200 G [Golf Cars]
Kioti DK55 Tractor
Kioti DK55 Tractor
Takeuchi TL140 Crawler Loader
Express Dual 4000 Grinder
Angle Master 4000

IT IS SO ORDERED.

Signed: September 9, 2009


Martin Reidinger
United States District Judge



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Defendants.

NOTICE

READ THIS NOTICE.

**WARNING: DO NOT WILLFULLY DISPOSE OF, REMOVE OR PERMIT
THE REMOVAL FROM THE STATE OF NORTH CAROLINA, OR CAUSE
OR PERMIT WILLFUL DAMAGE OR DESTRUCTION OF THE PROPERTY
DESCRIBED BELOW BECAUSE YOU MAY BE HELD IN CONTEMPT OF
COURT AND MAY BE FINED AND IMPRISONED.**

To Seven Falls Golf and River Club, LLC:

If you want to present reasons why you should not have the property
described below taken from you, then you should appear at a hearing to be

held before the undersigned at 2:00 p.m. on the 5th day of October, 2009, at the United States District Courthouse, 100 Otis Street, Asheville, North Carolina 28801 because the Plaintiff Textron Financial Corp. has sworn that you wrongfully hold the following property and that it is entitled to it:

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Jacobsen AR Fine Cut [Mower]
Jacobsen PA 60 Var Depth Aerator
Jacobsen GA 24 Aerator, 8 HP
Jacobsen GA 24 Aerator, 8 HP
Jacobsen Groom Master
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Tru-Turf RS 48 Roll-N-Spike
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Cushman Truckster 32 HP Gas 4-WHL
Jacobsen Spraytek DS-300
Jacobsen Spraytek DS-175
Truckster 32 HP Gas 4-WHL A
Cushman 1500 Top Dresser
Turfco F15B-SP Top Dresser
Jacobsen 63285 GK 526A
Smithco V-72 Pull Type Sweeper
Landpride 60" Seeder
Billy Goat 9 HP Blower
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Kioti DK55 Tractor
Kioti DK55 Tractor
Takeuchi TL140 Crawler Loader
Express Dual 4000 Grinder
Angle Master 4000

At the hearing the Plaintiff will present evidence, and you are allowed to present evidence. You may bring an attorney to this hearing. Upon the basis of the evidence presented, the Court will decided whether or not to

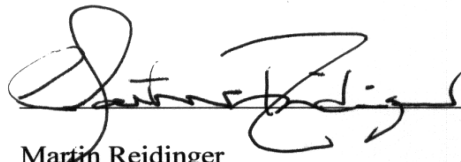
issue an Order directing the United States Marshal to take the property until a trial on the merits is held. You are hereby **ORDERED**:

- a. Not to willfully dispose of the property;
- b. Not to remove or permit its removal from the State of North Carolina;
- c. Not to cause or permit its damage or destruction.

If you fail to comply with the Court's Order, and it is finally determined that the Plaintiff is entitled to the possession of the property, you may be guilty of contempt of court and may be fined or imprisoned as provided by law.

If you have any questions about the hearing, you may contact an attorney or the Clerk of Court prior to the hearing.

Signed: September 9, 2009


Martin Reidinger
United States District Judge

